

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE EARTHGRAINS COMPANY,
SPECIALTY FOODS CORPORATION, and
METZ HOLDINGS, INC.,

Defendants.

Civil No: 00 C 1687

Filed: March 20, 2000

Judge Bucklo
Magistrate Judge Nolan

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Earthgrains” means defendant The Earthgrains Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Specialty Foods” means defendant Specialty Foods Corporation, a Delaware corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries (including defendant Metz Holdings, Inc. or “Metz”), divisions, groups,

affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Acquirer” means the entity or entities to whom defendants divest the Relevant Baking Assets.

D. “Relevant Baking Assets” means:

1. A perpetual, royalty-free, freely assignable and transferrable, and exclusive license to make, have made, use or sell white pan bread in the Relevant Territory under each of the Relevant Labels; and
2. Each of the Additional Baking Assets.

E. “Additional Baking Assets” means:

1. Earthgrains’s Des Moines, IA bakery;
2. A perpetual, royalty-free, freely assignable and transferrable, and exclusive license to make, have made, use or sell under each of the Relevant Labels any bread, bun or roll other than white pan bread in the Relevant Territory;
3. All trucks and other vehicles, depots and warehouses, and thrift stores used by defendants in the sale and distribution of bread, buns and rolls under each of the Relevant Labels in the Relevant Territory; and
4. All route books, customer lists, contracts and accounts used by defendants in the sale and distribution of bread, buns and rolls under each of the Relevant Labels in the Relevant Territory.

F. “Label” means all legal rights associated with a brand's trademarks, trade names, copyrights, service names, service marks, intellectual property, designs, and trade dress; the brand's trade secrets; the brand's technical information and production know-how, including, but not limited to, recipes and formulas used to produce bread currently sold under the brand, and any improvements to, or line extensions thereof; and packaging, marketing and distribution know-how and documentation, such as customer lists and route maps, associated with the brand.

G. “Relevant Labels” means:

- (1) Earthgrains’s Colonial label; and
- (2) Metz’s Taystee label (a license to which label may be divested to an Acquirer without prior approval of the licensor, Interstate Brands West Corporation, *see* the letter hereto attached as an appendix to the proposed Final Judgment, Exhibit A).

H. “Relevant Territory” means:

- (1) Every county in the state of Iowa;
- (2) The following counties in the state of Nebraska: Burt, Butler, Cass, Colfax, Cuming, Dodge, Douglas, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Platte, Richardson, Saline, Sarpy, Saunders, Stanton, Seward, and Washington;
- (3) The following counties in the state of Kansas: Atchison, Brown, Clay, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson,

Johnson, Leavenworth, Lyon, Marshall, Miami, Morris, Nemaha, Osage,
Pottawatomie, Riley, Shawnee, Washington, Waubaunsee, and Wyandotte;

(4) The following counties in the state of Illinois: Carroll, Henry, Mercer,
Rock Island, and Whiteside; and

(5) The following counties in the state of Missouri: Andrew, Atchison,
Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb,
Gentry, Grundy, Harrison, Holt, Jackson, Johnson, Lafayette, Livingston,
Mercer, Nodaway, Pettis, Platte, Ray, Saline, and Worth.

I. “Earthgrains’s Des Moines, IA bakery” means the bakery located at 1225-1303
2nd Avenue, Des Moines, IA 50314, and all of Earthgrains’s rights, titles and interests in any
tangible assets (*e.g.*, land, buildings, other real property and improvements, fixtures, machinery,
tooling, fixed assets, personal property, inventory, office furniture, material, supplies and
equipment) relating thereto, including all fee and leasehold and renewal rights in such assets or
any options to purchase any adjoining property.

J. “White Pan Bread” means white bread baked in a pan, but shall not include
hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants’ prompt divestitures
of the Relevant Baking Assets for the purpose of establishing one or more viable competitors in
the production and sale of white pan bread in the Relevant Territory in order to remedy the
effects that the United States alleges would otherwise result from Earthgrains’s acquisition of

Metz. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Baking Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Earthgrains, and that competition is maintained during the pendency of the ordered divestitures.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Illinois, Eastern Division.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the

proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Relevant Baking Assets as independent competitive businesses, with management, sales and operations of such

assets held entirely separate, distinct and apart from those of Earthgrains's other operations.

Earthgrains shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Relevant Baking Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Earthgrains shall take all steps necessary to ensure that (1) the Relevant Baking Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the production and sale of bread; (2) management of the Relevant Baking Assets will not be influenced by Earthgrains (or Metz); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under any of the Relevant Baking Assets will be kept separate and apart from Earthgrains's other operations. Earthgrains's influence over the production and sale of products utilizing the Relevant Baking Assets shall be limited to that necessary to carry out its obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment. Earthgrains may, however, receive historical aggregate financial information (excluding capacity utilization or pricing information relating to the Relevant Baking Assets to the extent necessary to allow Earthgrains to prepare financial reports, tax returns, and other legally required reports.)

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under Relevant Baking Assets, and shall maintain at 1999 or previously approved levels for 2000, whichever are higher, all promotional,

advertising, sales, technical assistance, marketing and merchandising support for the Relevant Baking Assets and otherwise maintain the Relevant Baking Assets as active competitors in the Relevant Territory.

D. Earthgrains shall take all steps necessary to ensure that its Des Moines, IA bakery will be maintained and operated as an independent, ongoing, economically viable business concern.

E. Earthgrains shall provide sufficient working capital and lines and sources of credit to continue to maintain the Relevant Baking Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V (A) and (B).

F. Earthgrains shall take all steps necessary to ensure that its Des Moines, IA bakery is fully maintained in operable condition at no less than its current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Baking Assets.

G. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Baking Assets.

H. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of products produced, distributed or sold utilizing the Relevant Baking Assets.

I. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise

alter the salary or employment agreements for any Earthgrains, Metz, or Specialty Foods employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works in Earthgrains's Des Moines, IA bakery or in the production, distribution or sale of bread, buns or rolls under a Relevant Baking Asset or (2) is a member of management referenced in Section V(J) of this Hold Separate Stipulation and Order.

J. Until such time as the Relevant Baking Assets are divested pursuant to the terms of the Final Judgment, the Relevant Baking Assets shall be managed by Mr. Paul Johnson, Vice President for Earthgrains's Iowa/Nebraska Zone. Mr. Johnson shall have complete managerial responsibility for the Relevant Baking Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Johnson is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to a Acquirer or Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: March 17, 2000.

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/

Anthony E. Harris, Esquire
IL Bar # 1133713
U.S. Department of Justice
Antitrust Division
Litigation II Section
1401 H Street, NW, Suite 3000
Washington, DC 20005
(202) 307-6583

Respectfully submitted,

FOR DEFENDANT
THE EARTHGRAINS COMPANY

/s/

Roxann E. Henry, Esquire
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1299 Pennsylvania Avenue, NW
Washington, DC 20005
(202) 383-6503

FOR DEFENDANTS
SPECIALTY FOODS INC. and
METZ HOLDINGS, INC.

/s/

Roxann E. Henry, Esquire
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O R D E R

IT IS SO ORDERED by the Court, this _20_ day of March 2000.

/s/

United States District Judge